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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 **SUSAN PAGE WEYRAUCH**
1214 Prune Street
13 Hollister, CA 95023

14 Registered Nurse License No. 514989

15 Respondent.

Case No.

2009-39

OAH No.

A C C U S A T I O N

16 Complainant alleges:

17 **PARTIES**

18 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
19 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
20 Department of Consumer Affairs.

21 2. On or about August 25, 1995, the Board of Registered Nursing issued
22 Registered Nurse License Number 514989 to Susan Page Weyrauch (Respondent). The
23 Registered Nurse License was in full force and effect at all times relevant to the charges brought
24 herein and will expire on December 31, 2008, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing
27 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
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references are to the Business and Professions Code unless otherwise indicated.

4. Section **2750** of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 2761 of the Code states, in pertinent part:

“The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

“(a) Unprofessional conduct, which includes, but is not limited to, the following:

“(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

“ . . . ”

7. Section 2762 of the Code states, in pertinent part:

“In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

“ ”
• • •

“(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.”

8. California Code of Regulations, title 16, section 1442, states:

"As used in Section 2761 of the code, 'gross negligence' includes an extreme

1 departure from the standard of care which, under similar circumstances, would have ordinarily
2 been exercised by a competent registered nurse. Such an extreme departure means the repeated
3 failure to provide nursing care as required or failure to provide care or to exercise ordinary
4 precaution in a single situation which the nurse knew, or should have known, could have
5 jeopardized the client's health or life."

6 9. California Code of Regulations, title 16, section **1443**, states:

7 "As used in Section 2761 of the code, 'incompetence' means the lack of possession
8 of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed
9 and exercised by a competent registered nurse as described in Section 1443.5."

10 10. California Code of Regulations, title 16, section **1443.5** states:

11 "A registered nurse shall be considered to be competent when he/she consistently
12 demonstrates the ability to transfer scientific knowledge from social, biological and physical
13 sciences in applying the nursing process, as follows:

14 "(1) Formulates a nursing diagnosis through observation of the client's physical
15 condition and behavior, and through interpretation of information obtained from the client and
16 others, including the health team.

17 "(2) Formulates a care plan, in collaboration with the client, which ensures that
18 direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and
19 protection, and for disease prevention and restorative measures.

20 "(3) Performs skills essential to the kind of nursing action to be taken, explains
21 the health treatment to the client and family and teaches the client and family how to care for the
22 client's health needs.

23 "(4) Delegates tasks to subordinates based on the legal scopes of practice of the
24 subordinates and on the preparation and capability needed in the tasks to be delegated, and
25 effectively supervises nursing care being given by subordinates.

26 "(5) Evaluates the effectiveness of the care plan through observation of the
27 client's physical condition and behavior, signs and symptoms of illness, and reactions to
28 treatment and through communication with the client and health team members, and modifies the

1 plan as needed.

2 "(6) Acts as the client's advocate, as circumstances require, by initiating action to
3 improve health care or to change decisions or activities which are against the interests or wishes
4 of the client, and by giving the client the opportunity to make informed decisions about health
5 care before it is provided."

6 **COST RECOVERY**

7 11. Section 125.3 of the Code provides, in pertinent part, that the Board may
8 request the administrative law judge to direct a licensee found to have committed a violation or
9 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
10 and enforcement of the case.

11 **DANGEROUS DRUGS/CONTROLLED SUBSTANCES**

12 12. Section 4021 of the Code states:

13 "'Controlled substance' means any substance listed in Chapter 2 (commencing
14 with Section 11053) of Division 10 of the Health and Safety Code."

15 13. Section 4022 of the Code states:

16 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
17 self-use, except veterinary drugs that are labeled as such, and includes the following:

18 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
19 without prescription," "Rx only," or words of similar import.

20 "(b) Any device that bears the statement: "Caution: federal law restricts this
21 device to sale by or on the order of a _____," "Rx only," or words of similar import, the
22 blank to be filled in with the designation of the practitioner licensed to use or order use of the
23 device.

24 "(c) Any other drug or device that by federal or state law can be lawfully
25 dispensed only on prescription or furnished pursuant to Section 4006."

26 14. **Ambien** is a brand name for Zolpidem, a Schedule IV controlled
27 substance as designated by Health and Safety Code section 11057(d), and a dangerous drug
28 within the meaning of Code section 4022.

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1 DATED: 8/21/08

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3 Ruth Ann Terry
4 RUTH ANN TERRY, M.P.H., R.N.
5 Executive Officer
6 Board of Registered Nursing
7 Department of Consumer Affairs
8 State of California
9 Complainant
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